IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3852 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PASHABHAI RATNABHAI VANKAR

Versus

DY CONSERVATOR OF FOREST

Appearance:

MR KB PUJARA for Petitioners

Messrs Patel Advocates for respondent no.1

Mr.Digant P. Joshi, ASSTT GOVERNMENT PLEADER for Respondent no.3 -- State.

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: / /2001

C.A.V. JUDGEMENT

The present petition is filed by the persons who have been serving as daily wagers in the Social Forestry Division of Sabarkantha Forest Division since many years.

Petitioners no.1 and 2 have been serving since 1.1.1991 and 2.4.1993 respectively. The petitioners were paid daily wage of Rs.69.30 per day.

2. It is the case of the petitioners that the State Govt. took a policy decision to make recruitment to the posts of Beat Guards from daily wagers, like the present petitioners of the Forest Department. Therefore, the Principal Chief Conservator of Forests, Gujarat State issued a circular dated 28.9.1998, a copy of which is produced at Annexure 'A' to the petition. The circular was sent to all the Conservators of Forest of all the circles and divisions. Pursuant to that circular, the daily wagers like the petitioners herein were called for oral interview with their testimonials on 15.10.1998, by call letters dated 12.10.1998 but thereafter by another call letter dated 23.10.1998 for an interview on 28.10.1998. Copies of both the call letters dated 12.10.1998 and 23.10.1998 are produced at Annexure 'B' (Colly.) to the petition.

3. It is the case of the petitioners that pursuant to the interview held by the department on 28.10.1998 the petitioners were declared 'pass'. On the next day, i.e. 29.10.1998 the petitioners were called for 'walking test'. As per the information of the petitioners, 42 daily wagers of Sabarkantha Division appeared for the interview amongst them. The petitioners were thereafter taken for medical test at Civil Hospital, Himatnagar, wherein also the petitioners were declared successful. The department prepared a list of 37 successful candidates for appointment as Beat Guards. In that list, the names of the present petitioners are at serial nos.24 and 31. A copy of that list is produced at Annexure 'C' to this petition.

4. The petitioners were waiting for the orders, appointing them as Beat Guards. But to their surprise they were not appointed while the persons whose names are appearing at serial nos.30 and 33 in the said list, Annexure 'C', page 17 to the petition came to be appointed by order dated 9.12.1999, zerox copies of the letters/ orders are produced at Annexure 'D' (Colly.) to the petition. It is interesting to note that the person at serial no.30, Shri Kalusinh Abhesinh Vaghela had joined service as a Rojamdar since 2.4.1993 only while the person at serial no.33, i.e. Shri Karmaji Laluji joined service on 1.4.1994. As against that the petitioners herein are serving as daily wagers since 1991 and 1993 respectively.

The petitioners were surprised to learn that out of the list of 37 persons, a copy of which is at Annexure 'C', 14 persons are appointed by the department. The petitioenrs are excluded for the reasons best known to the authorities. The petitioners believe that they are not appointed for extraneous consideration only. The petitioners are left out without any rhyme or reason.

5. The petitioners having come to know about the appointment of the persons who are lower in the merit list as well as junior to the petitioenrs made several representations to the authorities, oral as well as written. The petitioners also requested the authorities to issue appointment orders in their favour also. But the authorities did not pay any heed to the representations of the petitioenrs and hence the same did not bear fruits. The petitioners received only oral assurances.

6. The action of the respondent authorities of appointing junior persons who were also lower in the merit list and not appointing the petitioenrs, is challenged by way of this petition, being unjust, arbitrary, discriminatory, illegal, bad in law, null and void, contrary to the canons of equity, justice and fair play and good conscience and also violative of the principles of natural justice. The petitioners have also set out the details of the persons, who are junior to the petitioners who are appointed in the month of December 1999.

7. The Court issued notice on 26.4.2000, making it returnable on 1.5.2000; and ordered to hear the matter with Special Civil Application No.2447 of 2000. In response to the notice, Messrs Patel Advocates appeared for the respondents. On 8.5.2000, rule came to be issued. Messrs Patel Advocates waived service of the 'rule'. Mr.Patel, learned advocate appearing for the respondents could not put forward any tenable defence to justify the action of the respondent authorities. Mr.Patel could not explain as to why the petitioners were denied appointment from the list of 37 daily wagers, produced at Annexure 'C' to the petition. Mr.Patel, learned advocate could not put forward any valid or convincing reason as to why the persons junior and lower in the merit list than the petitioners were appointed. Mr.Patel had no reply as to on what grounds the petitioners were denied the benefit of appointment as Beat Guard as per the policy of the Government, a copy of which is produced at Annexure 'A' to the petition.

8. A perusal of the policy of the Government produced at Annexure 'A' to the petition makes it clear that the rules for recruitment to the post of Beat Guard as amended were accepted by the Govt. and accordingly necessary instructions were passed by the Principal Chief Conservator of Forest, respondent no.2 herein. It is clearly laid down in the said policy that on the basis of the interview, lists of 'fit' and 'unfit' workmen are prepared; thereafter select list is prepared from the list of 'fit' workmen on the basis of the result of the interview. Finally the persons are appointed according to serial number in the said select list. It is also provided in the policy that before giving appointment as Beat Guard, select list will be required to be scrutinised by the Conservator of Forest and once the Conservator of Forest grants approval to the select list, the Deputy Conservator of Forest will issue appointment orders to the persons whose names are on the select list as Beat Guard.

9. Mr.Patel, learned advocate is not able to point out any reason for which the petitioners could not be given appointment though their names appeared at higher merit position in the list in question. He was also not able to answer as to why the persons who have joined as daily wager in the years 1993 and 1994 are given preference over the present petitioners who joined as daily wagers in the years 1991 and 1993. In absence of any justification from the respondent authorities, the action is held to be unjust, arbitrary, discriminatory and contrary to the policy of the Government.

10. In view of the aforesaid discussion, the respondent authorities are directed to consider the case of the petitioners for appointment as Beat Guard in accordance with the policy produced at Annexure 'A' to this petition and on having found them eligible for appointment, to give them appointment as Beat Guard from the date their juniors are given appointment as Beat Guard. Looking to the facts of the case, cost of Rs.2500/-, (Rupees two thousand and five hundred only) be paid to each of the petitioners. The authorities shall decide the case of the petitioners within the period of 10 (ten) weeks from the date of receipt of writ of this Court.

11. The petition is allowed with the aforesaid directions. Rule is made absolute. Direct Service is permitted.

(Ravi R. Tripathi, J.)

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